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09/943,708	08/31/2001	John D. Frazier	9378	2194
26890	7590	10/02/2006	EXAMINER	
JAMES M. STOVER NCR CORPORATION 1700 SOUTH PATTERSON BLVD, WHQ4 DAYTON, OH 45479			ZURITA, JAMES H	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/943,708

Applicant(s)

FRAZIER ET AL.

Examiner

James H. Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-24 and 26-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-24, 26-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Prosecution History**

The following partial chronology is presented to clarify the record.

On 31 August 2001, applicant filed the instant application.

On 29 July 2003, the Examiner issued a first office action, rejecting claims 1-41, as clearly anticipated by Jenkins (US 6,480,713), Walker (US 6,374,240) or Treyz (6,587,835).

On 29 January 2004, applicant cancelled claims 2, 25 and amended claims 1, 3, 5, 24, 26, 28. This amendment was entered on 26 April 2004.

On 2 April 2004, the application became abandoned for failure to respond to the office action of 7/29/03.

On 26 April 2004, Applicant filed a petition to revive the application.

On 26 April 2004, the Office entered applicant's amendment of 01/29/04.

On 16 June 2004, the Office granted applicant's petition to revive.

On 14 July 2004, Applicant's amendment was forwarded to the Examiner.

On 20 September 2004, the Examiner issued a non-final rejection of claims 1, 3-24, 26-41 as unpatentable over Walker (US 6374240).

On 24 January 2005, Applicant presented arguments against the rejection. No claims were amended.

On 15 April 2004, the Examiner issued a Restriction Requirement.

On 12 May 2005 applicant responded to the requirement, with traverse.  
Applicant selected invention III, claims 23-24 and 26-41.

On 13 February 2006, the Examiner rejected claims 1, 3-24, 26-41 as being unpatentable over Dickson et al. (US 6,574,603).

On 19 July 2006, applicant filed an amendment.

### ***Response to Amendment***

Applicant's submission of 19 July 2006 has been entered. Applicant amended claims 1, 3, 16, 17, 24 and 26.

Claims 1, 3-24, 26-41 are pending and will be examined.

### ***Response to Arguments***

Applicant's arguments filed 19 July 2006 have been carefully considered.

Objections to the Claims are withdrawn in view of amendment, objections to the drawings and rejections of the claims under 35 USC 112 are withdrawn in view of the amendment, explanations and their implications.

Applicant's comments concerning prior art rejection are not persuasive:

On pages 14-15, applicant copies selected text from Dickson and argues:

...Nowhere in the excerpts provided above, does Dickson et al. teach or suggest the steps of (1) assessing the quality-of-service received by the customer during the visit; and (2) deciding that the quality-of-service was inadequate.

...The referenced sections describe order placement and processing, but include no teaching concerning quality-of-service. It is accordingly believed that claims 1, 23 and 24, as well as the claims which depend therefrom, are patentable over Dickson et al.

At the onset, the Examiner notes that ***inadequate*** was removed from claim 1, and the limitation is not in the claim. See also rejection of claim 23 under 35 USC 112.

On page 16, applicant again copies selected text from Dickson and argues:

... The operation described in column 22 is clearly different than the process recited in claims 15 and 36.

... The excerpts of Dickson et al. provided above do not teach or suggest a method or system for use by a service establishment in measuring a customer's wait-time in a service lane which includes steps for the steps for initiating and completing a time-monitoring sequence. It is accordingly believed that claims 15 and 36, as well as the claims which depend therefrom, are patentable over Dickson et al.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to general allegations that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The Examiner notes applicant's allegation that selectively copied text is "...clearly different..." does not meet applicant's requirements under 37 CFR 1.111(b).

Applicant's response relies on selective excerpts from the reference to conclude that certain features are not disclosed. Examiner cites particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Applicant purports to traverse the Examiner's prior art rejection. A "traverse" is a denial of an opposing party's allegations of fact.<sup>1</sup> The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill

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in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 706.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971). If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of applicant's failure to adequately traverse official notice, the following are admitted prior art::

- ... it is well known for businesses to dispense coupons or other incentives to compensate customers for delays in services such as food preparation.
- ... it is old and well know to analyze historical information, from prior interactions, for example, to develop customer profiles and enable service establishments to target advertising and merchandising accordingly.
- ... it is old and well known to collect information and use the information to analyze purchasing habits of customers to present special offers.
- ... it is old and well known to reward employees for providing exceptional services to customers.

### ***Claim Rejections - 35 USC § 112***

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<sup>1</sup> Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 23 refers to *inadequate*. Applicant amended claim 1 to remove the term. Applicant is encouraged to review his materials for similar errors and correct them.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-24, 26-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson et al. (US 6,574,603).

**As per claim 1**, Dickson discloses a computer-automated method for use by a service establishment in providing services to a customer, comprising:

**acquiring** a signal from a device carried by the customer during a visit to the service establishment. See, for example, Figs. 2A-2C, Col. 7, lines 43-56.

**deriving** from the signal information that allows identification of the customer. See, for example, at least Col. 3, lines 48-67, Col. 15, lines 6-45. see also Fig. 10, item 502. see also references to customer account information, as in Col. 3, lines 1-31.

**using** this information to identify the customer and to retrieve archived information about previous interactions with the customer. See, for example, references to information stored at central locations and correlated account information, as in Col. 15, lines 46-67.

**analyzing** the archived information to identify a product or service of interest to the customer; see, for example, at least references to paying for ordering and fueling operations using stored account information, as in Col. 15, lines 6-45.

**assessing** the quality-of-service received by the customer during the visit. See also references to timeliness of food preparation, as in Col. 17, lines 18-37, and Col. 18, lines 62-Col. 19, line 14.

**deciding** that the quality-of-service received by the customer during the visit was below a quality-of-service threshold. See, for example, references to timeliness and delays, as in Col. 18, lines 63-Col. 19, line 13.

Dickson does not specifically disclose offering an identified product or service to a customer at a discount before the customer leaves the service establishment.

Official Notice is taken that it is well known for businesses to dispense coupons or other incentives to compensate customers for delays in services such as food preparation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Dickson to disclose offering an identified product or service to a customer at a discount before the customer leaves the service establishment.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Dickson to disclose offering an identified product or service to a customer at a discount before the customer leaves the service establishment for the



obvious reason that a customer may become dissatisfied with delays and may decide to not patronize the service establishment.

**As per claim 3**, Dickson discloses assessing the quality-of-service received by the customer during the visit includes measuring the amount of time taken to serve the customer and comparing the measured amount to a threshold amount. See, for example, references to timeliness of food preparation, as in Col. 17, lines 18-37, and Col. 18, lines 62-Col. 19, line14.

**As per claim 4**, Dickson **does not** specifically disclose using archived information about previous interactions with the customer in calculating the threshold amount.

Official Notice is taken that it is old and well know to analyze historical information, from prior interactions, for example, to develop customer profiles and enable service establishments to target advertising and merchandising accordingly.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Dickson to disclose using archived information about previous interactions with the customer in calculating the threshold amount.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Dickson to disclose using archived information about previous interactions with the customer in calculating the threshold amount for the obvious reason that a service establishment may be able to tailor advertising and merchandising accordingly.

**As per claim 5**, Dickson discloses measuring the amount of time that a customer waits in a service lane provided by the service establishment. See, for example, references to timeliness, as in claim 3. See also references to delays, as in Col. 18, lines 63-Col. 19, line 13. See also service establishments such as quick-serve restaurants and fueling, as in Col. 1, line 65-Col. 2, line 25.

**As per claim 6**, Dickson discloses measuring a customer's waiting time: **initiating** a time-monitoring sequence upon receiving the signal. See, for example, at least Col. 17, lines 18-37, Col. 22, lines 12-28, which discloses determining time periods, timely processing of orders.

**receiving** another signal from the device when the customer reaches a second checkpoint, see, for example, position interrogator 62.

**As per claim 7**, Dickson discloses that measuring the amount of time that the customer waits in the service lane includes:

**acquiring** a signal from the device when customer reaches a first checkpoint. see, for example, references to position interrogators, as in Fig. 1, item 60.

**acquiring** another signal from the device when the customer reaches a second checkpoint. see, for example, position interrogator 62.

**As per claim 8**, Dickson discloses measuring the amount of time that the customer waits in the service lane includes measuring the customer's waiting time in a drive-thru service lane provided by the service establishment. See, for example, references to timeliness and delays, as in Col. 22, lines 12-28, Col. 14, line 65-Col. 15, line 5.

**As per claim 9**, Dickson discloses acquiring a signal from a device carried by the customer includes acquiring a signal from a transponder carried on the customer's automobile. See, for example, Fig. 1A-1C.

**As per claim 10**, Dickson discloses that retrieving archived information includes requesting the archived information from a database system. See at least references to retrieving stored account information, as in Col. 3, lines 1-31.

**As per claim 11**, Dickson **does not** specifically disclose that retrieving archived information includes retrieving information collected by the service establishment during one or more previous visits by the customer

Official Notice is taken that it is old and well known to collect information and use the information to analyze purchasing habits of customers to present special offers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Dickson to disclose retrieving archived information includes retrieving information collected by the service establishment during one or more previous visits by the customer.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Dickson to disclose retrieving archived information includes retrieving information collected by the service establishment during one or more previous visits by the customer to present targeted advertising and merchandising to increase revenue.

**As per claim 12**, Dickson discloses retrieving information about the customer collected and shared by more than one service establishment. See, for example,

references to central control system, Fig. 9, which shows receipt from various service establishments.

**As per claim 13**, Dickson discloses that acquiring a signal from a device carried by the customer includes acquiring a signal from a transponder of a type that is meant to be carried in the customer's pocket. See, for example, at least Fig. 2A-2C.

**As per claim 14**, Dickson discloses the method of claim 1, where offering the product or service to the customer includes using an electronic terminal at the service establishment to generate a printed coupon. See references to printing receipts, as in Col. 8, lines 9-21.

**As per claim 15**, Dickson discloses method for use by a service establishment in measuring a customer's wait-time in a service lane, comprising;

**receiving** a signal from a device carried by the customer when the customer reaches a first checkpoint; see, for example, references to position interrogators, as in Fig. 1, item 60.

**initiating** a time-monitoring sequence upon receiving the signal. See, for example, at least Col. 17, lines 18-37, Col. 22, lines 12-28, which discloses determining time periods, timely processing of orders.

**receiving** another signal from the device when the customer reaches a second checkpoint, see, for example, position interrogator 62.

**completing** the time-monitoring sequence upon receiving that signal. See, for example, at least Fig. 11C, end.

**As per claim 16**, Dickson discloses comparing the measured wait-time to a threshold value. Time delays as disclosed by Dickson inherently involve comparing time values and determining that one is excessive. As per claim 16, Dickson **does not** disclose that if the measured wait-time exceeds the threshold value, rewarding the customer with compensation. See rejection of claim 1, above.

**As per claim 17**, Dickson discloses comparing the measured wait-time to a threshold value. As noted, time delays as disclosed by Dickson inherently involve comparing time values and determining that one is excessive. As per claim 17, Dickson does not specifically disclose that if the threshold value exceeds the measured wait-time, rewarding an employee of the service establishment.

Official Notice is taken that it is old and well known to reward employees for providing exceptional services to customers.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Dickson to disclose that if the threshold value exceeds the measure wait-time, rewarding an employee of the service establishment for providing exceptional service.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Dickson to disclose that if the threshold value exceeds the measure wait-time, rewarding an employee of the service establishment for providing exceptional service for the obvious reason that such rewards may increase employee morale and help the employee become more productive.

**As per claim 18**, Dickson discloses receiving the signal at the first checkpoint includes receiving the signal when the customer reaches a point-of-entry to the service lane. See, for example, Fig. 1 and related text, concerning measuring points.

**As per claim 19**, Dickson discloses receiving the signal at the first checkpoint includes receiving the signal when the customer reaches a point at which customers place orders with the service establishment. See, for example, Fig. 1 and related text, concerning measuring points.

**As per claim 20**, Dickson discloses the method of claim 15 where receiving the signal at the first checkpoint includes receiving the signal when the customer reaches a service window or service counter. See Fig. 1 and related text.

**As per claim 21**, Dickson discloses receiving the signal when the customer reaches a service window or service counter. See Fig. 1 and related text.

**As per claim 22**, Dickson discloses the method of claim 15, where receiving the signal at the second checkpoint includes **receiving** the signal when the customer reaches a point-of-exit from the service lane. See Fig. 1.

**Claim 23** is rejected on the same grounds as claim 1. see also Figs. 6, 7 and related text concerning network layout.

**Claim 24 is rejected on the same grounds as claim 1.**

Claim 26 is rejected on the same grounds as claim 3.

Claim 27 is rejected on the same grounds as claim 4.

Claim 28 is rejected on the same grounds as claim 5.

Claim 29 is rejected on the same grounds as claim 6.

Claim 30 is rejected on the same grounds as claim 7.

Claim 31 is rejected on the same grounds as claim 8.

Claim 32 is rejected on the same grounds as claim 9.

Claim 33 is rejected on the same grounds as claim 10.

Claim 34 is rejected on the same grounds as claim 11.

Claim 35 is rejected on the same grounds as claim 12.

**Claim 36 is rejected on the same grounds as claim 15.**

Claim 37 is rejected on the same grounds as claim 18.

Claim 38 is rejected on the same grounds as claim 19.

Claim 39 is rejected on the same grounds as claim 20.

Claim 40 is rejected on the same grounds as claim 21.

Claim 41 is rejected on the same grounds as claim 22.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**James Zurita**  
**Primary Examiner**  
**Art Unit 3625**  
28 September 2006

*James Zurita*  
*Primary Examiner*